

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

CYNTHIA G. WEIR-SPENCER,
Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

Case No. 10-CV-800-FHM

OPINION AND ORDER

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 27] is before the court for decision. The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) is GRANTED.

The court remanded this case to the Commissioner for further administrative action, pursuant to sentence four of 42 U.S.C. § 406(g). [Dkt. 22]. On September 19, 2012, the Commissioner issued a fully favorable decision. [Dkt. 27-1]. Counsel's motion for relief under Rule 60(b)(6) was filed less than a month after the issuance of the decision. Counsel represents that, as of the date of filing the instant motion, the Notice of Award containing the amount of past due benefits has not been received. Consequently, the amount of the contingent attorney fee cannot be ascertained. Counsel requests an order allowing the filing of the motion for 406(b) fees within sixty days of receipt of the Notice of Award.¹ Plaintiff's counsel represents that the Commissioner objects to the motion, but the

¹Counsel actually requests 60 days following receipt of copies of "all of the *Notice of Awards*" issued to Plaintiff and her beneficiaries. [Dkt. 27, p. 3]. The date on which counsel receives notice of the amount of past due benefits and is thereby able to calculate the attorney fee award is the operative date for calculating the due date under this order.

Commissioner has not filed a brief in response to the instant motion, and the time for filing such a brief has passed.

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 23] is GRANTED. A motion for an attorney fee award under §406(b), together with the required notice to Plaintiff and statement concerning any objection thereto, may be filed within 60 days of the Notice of Award advising of the amount of past due benefits..

SO ORDERED this 5th day of November, 2012.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE